Supreme Court, U.S.
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No. 85-1914

In the Supreme Court of the United States

OCTOBER TERM, 1986

LYNDON H. LAROUCHE, JR.,
PETITIONER,

v.

NATIONAL BROADCASTING COMPANY, INC., ET AL.,
RESPONDENTS.

SUPPLEMENTAL BRIEF OF PETITIONER

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6 pp

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The petitioner, Lyndon H. LaRouche, Jr., having previously filed a petition for writ of certiorari with this Court, submits the instant supplemental brief to call the court's attention to a new matter in connection with the counterclaim judgment which is the subject of the third question presented.

Additional Reason For Granting The Writ:

THE DECISION OF THE COURT OF APPEALS UPHOLDING THE DISTRICT COURT'S DENIAL OF PETITIONER'S MOTION FOR A NEW TRIAL ON THE COUNTERCLAIM JUDGMENT IS IN CONFLICT WITH A RECENT DECISION OF THE FIFTH CIRCUIT.

The jury in the trial of this action returned a verdict in favor of respondent NBC on its counterclaim for interference with business relations in the amount of $2,000 in actual damages and $3,000,000 in punitive damages. (Appendix A-21). In connection with his post-trial motion j.n.o.v. or for a new trial, petitioner contended, *inter alia*, that the jury verdict resulted from passion and prejudice and therefore could not stand. The district court rejected the argument that the jury acted out of passion and prejudice, but found that the punitive damage award was excessive. The court therefore ordered a remittitur reducing the punitive damages from $3,000,000 to $200,000. (A-25, 26).

Petitioner argued in his brief to the Court of Appeals for the Fourth Circuit that the excessive amount of the punitive damage award indicated that the jury had acted out of passion and prejudice, and therefore a new trial, not a remittitur, should have been granted. The court's affirmance of the judgment is an implicit rejection of that argument, and is in direct conflict with a recent decision of the Fifth Circuit.

In *Wells v. Dallas Independent School District*, 793 F.2d 679 (5th Cir. 1986), the court was faced with a $1.9 million jury damage award which was reduced to $250,000 on remittitur by the district court. The court noted that while damage awards which are merely excessive are candidates for remittitur, where a verdict results from passion or prejudice, a new trial, not a remittitur, is the proper remedy. *Id.* at 683. The court went on to state that

> at some point on the scale an excessive award becomes so large that it can no longer be considered merely excessive. At that point, when an award is 'so exaggerated as to indicate bias, passion, prejudice, corruption, or other improper motive,' . . . remittitur is inadequate and the only proper remedy is a new trial.

Id. at 684 (citation omitted). The court then concluded that, in view of the fact that the district court felt compelled to reduce the award by more than an order of seven, the jury award was so large that it reflected passion or prejudice; it found that it was

> difficult to regard the quarter-million dollar remnant of a virtual two-million verdict as in any significant sense a product of the jury. It was the judge's verdict; a new trial is called for.

Id. at 684.

In the present case, the district court felt that the punitive damage award was excessive, and felt compelled to reduce the award by a factor of fifteen. This is more than twice the figure which the court in *Wells* considered to reflect the existence of passion and prejudice. Thus, the decision of the court of appeals in the instant case is in conflict with the Fifth Circuit's decision in *Wells*, and should be reviewed by this Court.

Respectfully submitted,

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